

**ECONOMIC DEVELOPMENT AUTHORITY[261]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of 2013 Iowa Code section 15.106A and 2013 Iowa Acts, chapters 34 and 126, the Economic Development Authority hereby gives Notice of Intended Action to amend Chapter 76, “Aggregate Tax Credit Limit for Certain Economic Development Programs,” to rescind Chapter 113, “Community Microenterprise Development Organization Grant Program,” to amend Chapter 187, “Contracting,” and to rescind Chapter 410, “Board Structure and Procedures,” Iowa Administrative Code.

In 2013 Iowa Acts, chapter 126, the General Assembly enacted changes to certain economic development programs in Iowa Code chapters 15 and 15E, including the High Quality Jobs Program and the Enterprise Zone Program. These changes included certain compliance cost fees for economic development contracts and an increase in the maximum aggregate tax credit limitation on economic development programs, among other things.

In 2013 Iowa Acts, chapter 34, the General Assembly enacted changes to the administration of certain economic development programs in Iowa Code chapters 15 and 15E, including changes to contract administration, the repeal of the Community Microenterprise Development Organization Grant Program, the elimination of the Broadband Deployment Governing Board, and the elimination of the requirement that the Economic Development Authority approve certain industrial property tax exemptions granted by local governments.

The proposed amendments are necessitated by the enacted legislation and will update and clarify certain administrative rules.

The Economic Development Authority Board approved these amendments on March 28, 2014, at the Board’s monthly meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before May 6, 2014. Paper materials with suggestions and comments may be directed to Timothy J. Whipple, Legal Counsel, 200 East Grand Avenue, Des Moines, Iowa 50309. Electronic submissions may be sent to [tim.whipple@iowa.gov](mailto:tim.whipple@iowa.gov).

After analysis and review of this rule making, no negative impact on jobs has been found, and the Authority finds that these amendments are likely to substantially benefit the Iowa economy by helping retain businesses in Iowa and by increasing the amount of financial assistance available to Iowa businesses.

These amendments are intended to implement 2013 Iowa Acts, chapters 34 and 126.

The following amendments are proposed.

ITEM 1. Amend rule 261—76.1(83GA,SF483) as follows:

**261—76.1(83GA,SF483 15) Authority.** The authority for establishing rules governing the aggregate tax credit limit for certain economic development programs under this chapter is ~~2009 Iowa Acts, Senate File 483~~ Iowa Code sections 15.106A and 15.119.

ITEM 2. Amend rule **261—76.2(83GA,SF483)**, parenthetical implementation statute, as follows:  
(83GA,SF483 15)

ITEM 3. Amend rule 261—76.3(83GA,SF483) as follows:

**261—76.3(83GA,SF483 15) Definitions.**

“Authority” means the economic development authority.

“Board” means the Iowa economic development board established in Iowa Code section 15.103 members of the board in whom the powers of the authority are vested pursuant to Iowa Code chapter 15.

“Department” means the Iowa department of economic development.

ITEM 4. Amend rule 261—76.4(83GA,SF483) as follows:

**261—76.4(83GA,SF483 15) Amount of the tax Tax credit cap—exceeding the cap—reallocation of declinations.**

76.4(1) Maximum aggregate limit on tax credits. The department Except as provided in subrule 76.4(2), the authority shall not authorize tax credit awards made under the programs identified in rule 261—76.5(83GA,SF483) in excess of \$185 million per fiscal year for any one fiscal year an amount of tax credits that is in excess of \$170 million.

76.4(2) Exceeding the cap. The authority may authorize an amount of tax credits during a fiscal year that is in excess of the amount specified in subrule 76.4(1), but the amount of such excess will not exceed 20 percent of the amount specified in subrule 76.4(1) and will be counted against the total amount of tax credits that may be authorized for the next fiscal year.

76.4(3) Reallocation of declinations. Any amount of tax credits authorized and awarded during a fiscal year for a program specified in rule 261—76.5(15) which is irrevocably declined by the awarded business on or before June 30 of the next fiscal year may be reallocated, authorized, and awarded during the fiscal year in which the declination occurs. Tax credits authorized pursuant to this subrule will not be considered for purposes of subrule 76.4(2).

ITEM 5. Rescind rule 261—76.5(83GA,SF483) and adopt the following **new** rule in lieu thereof:

**261—76.5(15) Programs subject to the cap.**

**76.5(1)** Tax credits authorized under the following economic development programs are subject to the tax credit cap:

- a. The high quality jobs program.
- b. The enterprise zone program.
- c. The assistive device tax credit program.
- d. The tax credits for investments in qualifying businesses and community-based seed capital funds.
- e. The tax credits for investments in certified innovation funds.
- f. The redevelopment tax credit program for brownfields and grayfields.

**76.5(2)** Pursuant to rule 261—76.6(15), the authority will allocate a certain amount of tax credits to the programs listed in this rule.

ITEM 6. Rescind rule 261—76.6(83GA,SF483) and adopt the following **new** rule in lieu thereof:

**261—76.6(15) Allocating the tax credit cap.**

**76.6(1) Procedure for allocations.** At a scheduled meeting of the board prior to the start of a fiscal year, the board will allocate a portion of the tax credits available under the cap to the programs listed in rule 261—76.5(15). The board is not required to allocate a portion of the cap to every program listed. The board may allocate a portion of the cap to be shared by programs with a common purpose. For example, the business awards made under the enterprise zone program and high quality jobs program may be allocated one amount to jointly serve both programs. Throughout the fiscal year, the board may review the allocation as necessary, but shall review the allocation at least one time during the fiscal year. Based on its review, the board may make adjustments to the allocation as deemed necessary.

**76.6(2) Required suballocations.** Iowa Code section 15.119 requires the authority to make certain suballocations to the programs subject to the cap. In some cases, there is a minimum

required suballocation and in others a maximum suballocation. The authority will make the required suballocations and count them against the maximum aggregate cap before making any discretionary allocations.

**76.6(3) Allocation to programs subject to the cap.** For the fiscal year beginning July 1, 2013, and for all subsequent fiscal years in which the required suballocations are not changed, the authority will allocate the maximum aggregate tax credit cap as follows:

a. \$2 million to the credits for investments in qualifying businesses and community-based seed capital funds, unless the authority determines that the program demand is less than that amount.

b. \$8 million to the tax credits for investments in certified innovation funds, unless the authority determines that the program demand is less than that amount.

c. \$10 million to the redevelopment tax credit program for brownfields and grayfields, unless the authority determines that the program demand is less than that amount.

d. To the assistive device tax credit program, an amount necessary to meet the demand for that year.

e. To any other programs that may be made subject to the cap but which are not listed in this subrule, any amount that may be required by law or such amount as the board determines prudent given the amount of tax credits available.

f. To the high quality jobs program and the enterprise zone program, an amount equal to the amount necessary to meet the demand for that year, provided that such amount will not exceed the remainder of the maximum aggregate tax credit limit for that year.

ITEM 7. Rescind and reserve rule **261—76.7(83GA,SF483)**.

ITEM 8. Amend rule 261—76.8(83GA,SF483) as follows:

**261—76.8(83GA,SF483 15) Reporting to the department of revenue.** The ~~department~~ authority shall submit an initial report to the department of revenue by August 15, ~~2009~~ of each year, which shows the initial allocation of the ~~\$185 million maximum aggregate tax credit cap~~. At the start of each subsequent fiscal year, the ~~department~~ authority shall prepare a report to summarize the final allocation for the fiscal year that just ended, the total amount of awards made under each program identified in rule 261—76.5(83GA,SF483) subject to the cap during that fiscal year, and the initial allocation for the current subsequent fiscal year. ~~The report shall be submitted to the department of revenue on or before August 15 of each year.~~

ITEM 9. Amend **261—Chapter 76**, implementation sentence, as follows:

These rules are intended to implement 2009 Iowa Acts, Senate File 483 Iowa Code section 15.119.

ITEM 10. Rescind and reserve **261—Chapter 113**.

ITEM 11. Amend subrule 187.2(2) as follows:

**187.2(2) Contract required.** The authority shall prepare a contract, ~~which~~ that includes, but is not limited to, a description of the project to be completed by the business; the jobs to be created or retained; length of the project completion period and maintenance project completion period; the project completion date and maintenance period completion date; conditions to disbursement; a requirement for annual reporting to the authority; and the repayment requirements of the business or other penalties imposed on the business in the event the business does not fulfill its obligations described in the contract and other specific repayment provisions (“clawback provisions”) to be established on a project-by-project basis. The contract shall include the requirements that must be met to confirm eligibility pursuant to the program and the requirements that must be maintained throughout the period of the contract in order to retain the incentives or financial assistance received.

ITEM 12. Amend subrule 187.5(1) as follows:

**187.5(1) Events of default.** The authority may, for cause, determine that a recipient is in default under the terms of the contract. The reasons for which the authority may determine that the recipient is in default of the contract include, but are not limited to, any of the following:

- a. Any material representation or warranty made by the recipient in connection with the application that was incorrect in any material respect when made.
- b. A material change in the business ownership or structure that occurs without prior written disclosure and the permission of the authority.
- c. A relocation or abandonment of the business or jobs created or retained through the project.
- d. Expenditure of funds for purposes not described in the application or authorized in the agreement.
- e. Failure of the recipient to make timely payments under the terms of the agreement, note or other obligation.
- f. Failure of the recipient to fulfill its job obligations.
- g. Failure of the recipient to comply with wage or benefit packages.
- h. Failure of the recipient to perform or comply with the terms and conditions of the contract.
- i. Failure of the recipient to comply with any applicable state rules or regulations.
- j. Failure of the recipient to file the required annual report.
- k. Failure of the recipient to comply with any other provision of the agreement required pursuant to Iowa Code section 15.330 or 15.330A.

ITEM 13. Amend subrule 187.5(4) as follows:

**187.5(4) Authority actions upon default—tax credit programs.** ~~Collection efforts for tax credit programs are handled by the local community that approved the local tax incentive and the Iowa department of revenue, the state agency responsible for the state tax incentives. If the authority determines that an event of default has occurred under the contract and that state tax incentives are required to be repaid, the eligible business and the department of revenue will both be notified of the event of default and of the required repayment amount. If the contract provided for local tax incentives, the community where the project is located will also be notified of the default. In the case of state tax incentives, the department of revenue will undertake collection efforts. In the case of local tax incentives, the local community will undertake collection efforts.~~

a. *Repayment.* If an eligible business or eligible housing business has received incentives or assistance under the EZ program or the HQJP and fails to meet and maintain any one of the requirements of the program or applicable rules, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. If the business is an entity that has elected pass-through taxation status for income tax purposes, the department of revenue may undertake collection efforts against members, individuals, or shareholders to whom the tax incentives were passed through.

b. *Calculation of repayment due for a business.* If the authority, in consultation with the city or county, determines that a business has failed in any year to meet any one of the requirements of the tax credit program, the business is subject to repayment of all or a portion of the amount of the incentives received.

(1) Job creation shortfall. If a business does not meet its job creation requirement or fails to maintain the required number of jobs, the repayment amount shall be calculated as follows: the same proportion as the amount of the shortfall in created jobs. For example, if the business creates 50 percent of the jobs required, the business shall repay 50 percent of the incentives received.

~~1.—If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to create in jobs.~~

~~2.—If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall pay one-half of the percentage in benefits as the business failed to create in jobs.~~

~~3.—If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall pay one-quarter of the percentage in benefits as the business failed to create in jobs.~~

~~4.—If the business has not met the minimum job creation requirements for the tax credit program, the business shall repay all of the incentives and assistance that it has received.~~

~~(2) Wages and benefits. If a business fails to comply with the wage or benefit requirements for the tax credit program, the business shall not receive incentives or assistance for each year during which the business is not in compliance.~~

~~(3)~~ (2) Capital investment shortfall. If a business does not meet the capital investment requirement, the repayment amount shall be calculated as follows: the same proportion as the amount of the shortfall in required capital investment. For example, if the business meets 75 percent of the amount of required capital investment, the business shall repay 25 percent of the amount of the incentives received.

1. ~~If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to invest.~~

2. ~~If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall pay one-half of the percentage in benefits as the business failed to invest.~~

3. ~~If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall pay one-quarter of the percentage in benefits as the business failed to invest.~~

4. ~~If the business has not met the minimum investment requirement for the tax credit program, the business shall repay all of the incentives and assistance that it has received.~~

(3) Job creation and capital investment shortfalls. If a business has a shortfall in both capital investment and job creation requirements, the repayment amount shall be the same proportion as the greater of the two shortfalls. For example, if a business creates 50 percent of the required jobs and meets 75 percent of the required capital investment, the business shall be required to repay 50 percent of the amount of the incentives received.

(4) Wages and benefits. Notwithstanding any other provision in this subrule, if a business fails to comply with the wage and benefit requirements of the contract, the business shall be required to repay all of the incentives received during the year in which the business was not in compliance with the wage and benefit requirements of the contract.

(5) Minimum eligibility. Notwithstanding any other provision in this subrule, if a program requires a minimum amount of job creation or capital investment in order to qualify for the program and a business fails to meet such minimum eligibility, the business shall repay all of the incentives received.

(6) Definitions. For purposes of this subrule, “incentives received” includes both amounts claimed from the department of revenue or the local community and any future incentives that remain unclaimed as of the date of default. “Capital investment” means the qualifying investment or investment qualifying for tax credits, as specified in the required contract.

*c. Department of revenue; county/city recovery.* Once it has been established, through the business’s annual certification, monitoring, audit or otherwise, that the business is required to repay all or a portion of the incentives received, the department of revenue and the city or county, as appropriate, shall collect the amount owed. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business. The department of revenue shall have the authority to recover the value of state taxes or incentives provided under the program pursuant to Iowa Code section ~~15E.193A~~ 15.330 or 15E.196. The value of state incentives provided under ~~Iowa Code section 15E.193A or 15E.196~~ includes the program shall include all applicable interest and penalties.

*d. Layoffs or closures.* If an eligible business experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the authority may reduce or eliminate all or a portion of the incentives and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after receiving the incentives and assistance, the business shall be subject to repayment of all or a portion of the incentives and assistance that it has received.

*e. Extensions.* If an eligible business or eligible housing business fails to meet its requirements under the Act, these rules, or the agreement described in rule 261—187.2(15), the authority, in consultation with the city or county, may elect to grant the business a one-year extension period to meet the requirements.

ITEM 14. Adopt the following **new** rule 261—187.6(15):

**261—187.6(15) Compliance cost fees.** An eligible business that executes a contract required pursuant to this chapter is subject to the imposition of certain compliance cost fees as provided in this rule.

**187.6(1) *One-time fee for closing costs.*** After execution of the contract and prior to the issuance of a tax incentive certificate or the disbursement of financial assistance, an eligible business shall remit to the authority a one-time compliance cost fee in the amount of \$500.

**187.6(2) *Ongoing fees based on claims.*** For each contract with an aggregate tax incentive value of \$100,000 or greater, the business shall remit a compliance cost fee equal to one-half of 1 percent of the value of the tax incentives claimed pursuant to the agreement. The fee required pursuant to this subrule shall be due and payable upon the filing of the business's annual tax return for each tax year in which the business claims incentives under the required contract. The authority will coordinate with the department of revenue to determine which businesses claim incentive benefits each year and will invoice each business accordingly. The requirement to pay the fee required under this subrule shall continue for the duration of the applicable carryforward period of the tax incentives notwithstanding the duration of the other contract requirements.

**187.6(3) *Applicability.*** This rule applies to contracts entered into under the high quality jobs program and the enterprise zone program.

ITEM 15. Amend **261—Chapter 187**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 15 and 15E and ~~2011 Iowa Code Supplement chapter 15G, subchapter I.~~

ITEM 16. Rescind and reserve **261—Chapter 410**.